



Ryan Stephan O'Brien

Employee

816384

Control of practice Date: 23 May 2022

Decision - Control of practice

Outcome: Condition

Outcome date: 23 May 2022

Published date: 29 June 2022

Firm details

Firm or organisation at time of matters giving rise to outcome

Name: Carpenters Limited

Address(es): Leonard House Scott Quay Birkenhead CH41 1FB

Firm ID: 625845

Outcome details

This outcome was reached by SRA decision.

Decision details

Adjudication decision

Reasons/basis

Findings

Allegation - That by the conduct which led to Mr O'Brien's conviction for Fraud by abuse of position on 13 April 2021, Mr O'Brien breached Principles 4, 5 and 7 of the SRA Principles 2019.

Principle 7 - you act in the best interests of each client

6.1 This allegation relates to Mr O'Brien's conduct while working at the firm and where he took confidential client information and sold it to a third party for money. He did this for 12 months and he was paid £44,901.

6.2 It is clear that the use of the client information was not done to aid their matters but was done for monetary gain. His Honour Judge Gilbert said:

'What you did has had an impact on Carpenters. The company has provided an impact statement. They were placed under stress and strain as a result of this. Until you were identified, their employees were effectively



under suspicion, which was unnerving and difficult for them. They are unable to calculate the financial impact, but they say, perhaps with a degree of understatement, that it was not insignificant. It also caused damage to the reputation of the business, it being particularly important, firstly, that solicitors conduct themselves properly in relation to their regulatory duties and, secondly, that they can be trusted to handle data properly and what you did undermined that.'

6.3 Mr O'Brien's actions had a significant impact on his employer and the clients' personal information that was stolen. He failed to act in their best interests and in doing so breached Principle 7.

Principle 4 - you act with honesty

6.4 Mr O'Brien was convicted of the offence of Fraud by abuse of position contrary to section 4 of the Fraud Act 2006. I have seen a copy of the certificate of conviction. He pleaded guilty to the offence.

6.5 Section 4 states: A person is in breach of this section if he -

(a) occupies a position in which he is expected to safeguard, or not to act against, the commercial interests of another person,

(b) dishonestly abuses that position, and

(c) intends, by means of the abuse of that position

(i) to make a gain for himself or another, or

(ii) to cause loss to another or to expose another to a risk of loss.

6.6 As this is a dishonesty type offence and Mr O'Brien has been found guilty to the criminal standard, he in fact pleaded guilty - this is conclusive evidence of his dishonesty (and a breach of Principle 4). I do not need to make a separate finding of dishonesty as requested by the investigation officer.

Principle 5 - you act with integrity

6.7 Whether someone has acted with a lack of integrity is assessed objectively having regard to their knowledge or belief as to the facts at the time. The case of *Wingate and another v SRA and SRA v Malins* [2018] EWCA Civ 366 said that integrity connotes adherence to the ethical standards of one's own profession and the duty to act with integrity applies not only to what professional persons say, but also to what they do by reference to SRA rules and regulations. An individual must do what is right and not what is convenient. It involves more than mere honesty.

6.8 The court also said in that case:

“...the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.”

6.9 His Honour Judge Gilbert said in his sentencing remarks that Mr O'Brien 'decided to act in this criminal way' and that 'this was calculated fraud committed over a significant period for personal gain. [Mr O'Brien] deliberately abused the trust which [his] employer had placed in [him] and [his] actions not only damaged them financially, but had an impact on their reputation.'

6.10 What strengthens the case against Mr O'Brien is the fact that ethical behaviour is vital to ensure compliance with the profession's commitment to uphold the rule of law and to act accordingly. The nature and complexity of what solicitors and their employees do mean their work has to be trusted to be of value. Therefore, solicitors and their employees are expected to demonstrate the highest standards of professional conduct. These standards are set out in the SRA Principles. Integrity is considered to be the useful shorthand to express the higher standards which society expects from professional persons and which the profession expects from their own members and employees. Mr O'Brien failed to adhere to those standards and breach Principle 5.

S99 Disqualification

6.11 The purpose of a section 99 disqualification is to prevent individuals from conducting certain statutory activities, as set out in paragraph 5.4 above.

6.12 A section 99 disqualification has a regulatory and penal function. It is there to protect the public from the risk posed by an individual when it is proportionate and necessary to impose a regulatory control over their work. It also penalises serious misconduct.

6.13 Before taking any regulatory action, I must be satisfied that the evidence is sufficient to show that Mr O'Brien's conduct has breached a relevant duty and justifies a conclusion that it would be undesirable for him to participate in one or more of the listed activities in paragraph 1.1.3.

6.14 Mr O'Brien was an employee of the firm, which is a licensed body. I have made findings that he breached SRA Principles 4, 5 and 7. These are relevant duties that applied to him as an employee of the firm, pursuant to Section 176 of the Legal Services Act 2007.

6.15 I am satisfied that these breaches occurred intentionally. Mr O'Brien was convicted of Fraud by abuse of position contrary to section 4 of the Fraud Act 2006. He benefitted financially from his misconduct.

6.16 I am therefore satisfied that the disqualification condition has been met. However, in order to disqualify I must also be satisfied that it is

undesirable for Mr O'Brien to be involved in any of the activities summarised at paragraph 1.1.3 above.

6.17 I have carefully considered the SRA's guidance on "How we regulate non-authorised persons" and the examples provided as to when conduct may result in a section 99 order being made. Having considered this, I have decided to impose a section 99 order for the following reasons:

- Mr O'Brien's conduct was serious. Mr O'Brien has been found dishonest and lacking in integrity in relation to his dealings with client confidential information. This is a serious matter for a member of a profession whose reputation depends on trust. Honesty is required from all those involved in the provision of legal services and Mr O'Brien has proved that he can act without this.
- Sir Thomas Bingham confirmed in *Bolton v The Law Society* that, for solicitors, a finding of dishonesty would often result in strike off. He said: 'In such cases the Tribunal has invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll.'
- The reason for such an approach is primarily two-fold. The first is to protect the public by ensuring that such individuals do not have the opportunity to engage in similar misconduct in the future. This is achieved in the long-term by striking him or her off the roll, and in the shorter term by a period of suspension. The second is to maintain public confidence in the legal profession as one in which every member of whatever standing can be trusted to the ends of the earth. Mr O'Brien may not be a solicitor, but this does not mean he should not be made subject to similar sanction.
- Mr O'Brien's actions have caused financial loss to his employer. The firm could not quantify its loss but did note it would have been significant.
- Mr O'Brien's actions were intentional. He sold client information and received a total of £44,901. This money was used for his own personal benefit.
- His conduct indicates that he is unsuitable to be a manager, employee or the HOLP or HOFA of a licensed body. Mr O'Brien has engaged in misconduct, which has demonstrated a lack of integrity and dishonesty on his part. I have explained above the importance of these findings and in view of it, he is unsuitable to be an employee of a licensed body.
- Given the findings made, Mr O'Brien is not suitable to hold the role of manager, HOLP and/or HOFA. These are statutory provisions which require the role holder to assume additional responsibility for regulatory compliance and reporting to the SRA. In view of his conduct and dishonesty, Mr O'Brien is not suitable to discharge the additional responsibilities required by these roles.
- In view of the above, I have decided that it is undesirable for Mr O'Brien to be engaged in any of the activities referred to in paragraph 5.4 above.



6.18 I have decided that the section 99 disqualification shall have immediate effect. Mr O'Brien does not object to the notice. In these circumstances, and given the seriousness of Mr O'Brien's conduct, I consider it is appropriate for the order to take effect immediately.

7. Publication

7.1 I do not have any discretion not to publish a decision to disqualify under section 99. The decision must be published. Given that Mr O'Brien has no objection to the disqualification and it is to take effect immediately, it is therefore in the public interest that publication is effective immediately in accordance with rule 6.2 of the SRA Application, Notice, Review and Appeals Rules.

8. Costs

8.1 I have been asked to award costs of £600. The amount of cost reflects a contribution to the resources that the SRA has used to investigate this matter. The SRA has determined the amount payable in accordance with schedule 1 of the RDPR.

8.2 I note Mr O'Brien has not provided any representations against the recommended cost order.

8.3 Having considered the rules I order Mr O'Brien to pay £600 in costs.

A Forbes

Senior Adjudicator

DISCIPLINARY DECISION FOR PUBLICATION

Ryan Stephen O'Brien who is not a solicitor, was employed by Carpenters Limited at Leonard House, Scott Quays, Birkenhead, CH41 1FB between 9 January 2017 and June 2019, when he was dismissed for gross misconduct.

1. On 13 April 2021 Mr O'Brien was convicted of Fraud by abuse of position and on 14 May 2021 he was sentenced and given a suspended sentence of 24 months; 20 days rehabilitation activity; 100 hours unpaid work; electronic monitoring from 9pm to 6am and ordered to pay a victim surcharge of £140.
2. By virtue of his conviction, it was found that Mr O'Brien had breached SRA Principles 4 (act with honesty), 5 (act with integrity) and 7 (act in the best interests of each client).

3. Mr O'Brien was made subject to a disqualification order under section 99 of the Legal Services Act 2007. This order prevents him from holding any of the following roles in a licensed body:

- Head of Legal Practice
- Head of Finance and Administration
- A manager
- An employee.

4. He was also directed to pay costs of £600.

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